

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KEVIN J. BLAIR,

Plaintiff,

**5:18-cv-363
(GLS/ATB)**

v.

ONONDAGA COUNTY et al.,

Defendants.

SUMMARY ORDER

On March 29, 2018, Magistrate Judge Andrew T. Baxter recommended dismissal of this action with prejudice in an Order and Report-Recommendation (R&R). (Dkt. No. 8.) Pending before the court are plaintiff *pro se* Kevin J. Blair's objections to the R&R. (Dkt. No. 9.) For the reasons set forth below, the R&R is adopted in part and rejected in part.

In his objections, Blair contends, among other things, that dismissal with prejudice is inappropriate given his *pro se* status. (*Id.* ¶ 27.)¹ To the extent that dismissal of defendants Robert S. Baska, Esq., M. Jerald

¹ Blair's objections are substantially broader than faulting the R&R for dismissing with prejudice. The additional arguments raised therein are rejected under the appropriate standard of review, and, to the extent de novo review is warranted, based upon the same logic of the R&R. See *Almonte v. N.Y. State Div. of Parole*, No. Civ. 904CV484, 2006 WL 149049, at *6 (N.D.N.Y. Jan. 18, 2006).

Harrel, Esq., Andrea M. Ferro, Esq., Onondaga County, and the Town of Clay are concerned, the court agrees that dismissal should have been without prejudice.² Indeed, the shortcomings identified in the R&R as to these defendants requires dismissal, as recommended by Judge Baxter, but better pleading could potentially cure the deficiencies for which dismissal is required, *i.e.*, facts to support the notion that Baska, Harrel, and Ferro conspired with state actors, and allegations to support municipal liability pursuant to *Monell v. Department of Social Security Services*, 436 U.S. 658 (1978). While the court otherwise adopts the logic and conclusions of the R&R and rejects the objections to the extent that they attack the same under the appropriate legal standard, *see Almonte v. N.Y. State Div. of Parole*, No. Civ. 904CV484, 2006 WL 149049, at *6 (N.D.N.Y. Jan. 18, 2006), dismissal of the above-identified defendants without prejudice is appropriate. In light of the foregoing, Blair shall be afforded thirty days to file an amended complaint in which he may attempt to correct

² Onondaga County Sheriff's Department would appear to be included with this group, however, because it is merely an "administrative arm[]" of a municipality, [it does] not have a legal identity separate from the municipality and may not sue or be sued." *Jenkins v. Onondaga Cty. Sheriff's Dep't*, No. 5:12-CV-855, 2012 WL 4491134, at *2 (N.D.N.Y. June 28, 2012), *report and recommendation adopted by* 2012 WL 4491128 (N.D.N.Y. Sept. 28, 2012). Therefore, dismissal of Onondaga County Sheriff's Department with prejudice was appropriate nonetheless.

the pleading deficiencies identified in the R&R as to Baska, Harrel, Ferro, Onondaga County, and the Town of Clay. Any such amended complaint will replace the existing complaint (which is dismissed by this Summary Order), and must be a wholly-integrated and complete pleading that does not rely upon or incorporate by reference any pleading or document previously filed with the court.

Accordingly, it is hereby

ORDERED that the R&R (Dkt. No. 8) is **ADOPTED IN PART AND REJECTED IN PART** as follows:

REJECTED to the extent that claims against Baska, Harrel, Ferro, Onondaga County, the Onondaga County Sheriff's Department, and the Town of Clay were dismissed with prejudice; and

ADOPTED in all other respects; and it is further

ORDERED that the complaint (Dkt. No. 1) is **DISMISSED** in its entirety; and it is further

ORDERED that all claims against defendants William J. Fitzpatrick, Dominic Trunfio, Michael Whalen, Brian J. Lauri, Andrew J. Tarkowski, and Onondaga County Sheriff's Department are **DISMISSED WITH**

PREJUDICE; and it is further

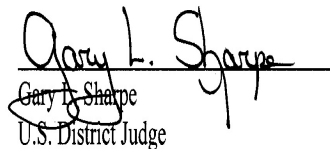
ORDERED that all claims against Baska, Harrel, Ferro, Onondaga County, the Onondaga County Sheriff's Department, and the Town of Clay are **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that, if Blair fails to file an amended complaint within thirty (30) days of the date of this Summary Order, the Clerk shall close the case without further order of the court; and it is further

ORDERED that the Clerk serve a copy of this Summary Order on Blair.

IT IS SO ORDERED.

July 16, 2018
Albany, New York


Gary L. Sharpe
U.S. District Judge